

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IMMEDIENT CORPORATION)	
)	
Plaintiff,)	
)	C.A. No. 01C-08-216 RRC
v.)	
)	
HEALTHTRIO, INC.)	
)	
Defendant.)	
)	

Submitted: May 31, 2007
Decided: July 6, 2007

Upon Plaintiff's Motion for Approval of Bill of Costs.
GRANTED in part and DENIED in part.

ORDER

P. Clarkson Collins, Jr., Esquire and Liza H. Sherman, Esquire, Morris James LLP, Wilmington, Delaware, Attorneys for Plaintiff.

William R. Denny, Esquire and James M. Kron, Esquire, Potter Anderson & Corroon LLP, Wilmington, Delaware, Attorneys for Defendant.

COOCH, J.

This 6th day of July 2007, upon consideration of Plaintiff's Motion for Approval of Bill of Costs, which seeks \$24,818.30 for trial transcripts, filing fees, court fees, mediator fees, and expert fees, it appears to the Court that:

1. Plaintiff's requested amount of \$6,281.40 for trial transcripts is uncontested. Therefore the Court will award Plaintiff \$6,281.40 for transcript fees.
2. Plaintiff also requests \$1,350 for filing fees. As this amount is also uncontested by Defendant, the Court will award Plaintiff \$1,350 for filing fees.
3. In addition, Plaintiff seeks to recover \$1,855 in "court fees." Defendant objects to \$1,600 of this amount which is comprised of *pro hac vice* filing and renewal fees. In Delaware such fees are not recoverable because "they could have been avoided by . . . selecting a Delaware attorney to bring this litigation."¹ Therefore the Court will award Plaintiffs \$255 in court costs.
4. Next, Plaintiff requests \$1,750 for mediation fees. Despite Defendant's argument that the mediator's fees should be shared, under the

¹ *Christiana Marine Services Corp. v. Texaco Fuel and Marine Marketing Inc.*, 2004 WL 42611, at *8 (Del. Super.) ("Since the choice of counsel was solely that of the Plaintiffs, it would be unfair to force [Defendants] to bear these costs."). *See also Bailey v. Beebe Medical Center, Inc.*, 2005 WL 2155704, at *8 (Del. Super.) (denying the plaintiffs' request to recover *pro hac vice* admission fees as part of their court costs).

circumstances, including the fact that the Court found against Defendant on all of its counterclaims, the Court will award Plaintiff this amount.²

5. For expert fees, Plaintiffs request \$5,655.01 for trial testimony (\$1,800), trial preparation (\$1,050), travel time (\$1,900), and travel expenses (\$905.01) of its expert Hans Ringstad. Ringstad's fees for travel time and travel expenses are not contested. Defendant does object to his fees for trial preparation and trial testimony. Expert fees for trial preparation are not recoverable, thus the Court will reduce Ringstad's fee by \$1,050.³ The Court finds the \$1,800 billed for trial testimony, which includes "time the expert spends in attendance upon the court for the purpose of testifying" and "travel time to and from the courthouse, wait time to be called as a witness, and testifying" to be reasonable.⁴ Therefore, the Court will award Plaintiff \$4,605.01 in expert fees for Ringstad.

6. Finally, Plaintiffs also seek \$7,926.89 for trial testimony and preparation (\$7,000) and travel expenses (\$926.89) of another expert in computer science, John Robosson. Defendant does not contest his travel expenses but do object to the \$7,000 as "unreasonable." In support of this claimed cost Plaintiff has provided the Court with one invoice from the

² *West v. Maxwell*, 2001 WL 789645, at *7 (Del. Super.) (holding that "the court will exercise its discretion in favor of Plaintiffs' application" where Plaintiffs requested reimbursement for two mediations).

³ *Foley*, 2007 WL 959521, at *2.

⁴ *Foley*, 2007 WL 959521, at *1.

period of December 1, 2003 to December 15, 2003 that contains a one line entry of \$7,000 for “Professional Fees.” Without knowing what activities are included in this fee request, the Court is left to determine the reasonableness of the fee based on the record.⁵

7. It appears from the record that a conservative estimate of his time testifying is one whole day. While there are no guidelines as to a reasonable rate for a computer scientist, guidelines for physicians have been applied to professions such as economists. In *Midcap*, this Court reasoned that “[i]t seems that a reasonable rate for an economist should be no higher than these figures, particularly since an economist testifying in court would not have a patient schedule to disrupt.”⁶ Consequently, after applying the high end of what has been considered a reasonable fee for a physician at the time of this trial for a full day of testimony, the Court finds that \$4,832 is a reasonable fee for Robosson’s trial testimony.⁷ Therefore the Court will award Plaintiff \$5,758.89 in expert fees for Robosson.

⁵ *Miller v. McLean*, 2006 WL 2382792 (Del. Super.) (determining the reasonableness of an expert fee based on the record when the expert fees were listed in on lump sum).

⁶ *Midcap*, 2004 WL 1588343, at * 3.

⁷ *Id.* (holding that a reasonable range for a physician for one half day of testimony, as adjusted for inflation, was \$1,725 to \$2,416 for a trial that was held at the end of 2003).

7. In all, the Court will award Plaintiff \$20,000.30 of the \$24,818.30 sought. For the reasons stated above, Plaintiff's motion for costs is **GRANTED in part and DENIED in part.**

IT IS SO ORDERED.

Richard R. Cooch

cc: Prothonotary